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| 09/810,387  | 03/15/2001  | Craig M. Carpenter   | MI22-1559                  | 8779                   |
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| WELLS ST. JOHN P.S.<br>601 W. FIRST AVENUE, SUITE 1300<br>SPOKANE, WA 99201 |             |                      | EXAMINER<br>ZERVIGON, RUDY |                        |
|   |             |                      | ART UNIT<br>1792           | PAPER NUMBER           |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/810,387

Filing Date: March 15, 2001

Appellant(s): CARPENTER ET AL.

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James E. Lake  
For Appellant

**SUPPLEMENTAL EXAMINER'S ANSWER**

Pursuant to the remand under 37 CFR 41.50(a)(1) by the Board of Patent Appeals and Interferences on February 14, 2008 **for further consideration of a rejection**, a supplemental

Examiner's Answer under 37 CFR 41.50(a)(2) is set forth below: Rationale for the BPAI remand is for further consideration of anticipation or obviousness under Posa<sup>1</sup>.

**(1) Evidence Relied Upon**

4,747,367

POSA

5-1998

**(2) Grounds of Rejection to be Reviewed**

The following ground of rejection is applicable to remand under 37 CFR 41.50(a)(1):

***Claim Rejections - 35 USC § 102***

Claims 1-8, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Posa; John G. (US 4747367 A). Posa teaches a chemical (56; Figure 1; column 5, lines 33-57) vapor deposition apparatus (Figure 4; column 7, line 57 - column 8, line 14) comprising: a deposition chamber (16; Figure 2,4; column 7, line 57 - column 8, line 14) (16; Figure 2,4; column 7, line 57 - column 8, line 14) defined by a chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14) and a chamber body (16; Figure 2,4; column 7, line 57 - column 8, line 14) having similar thicknesses<sup>2</sup>, the chamber body (16; Figure 2,4; column 7, line 57 - column 8, line 14) having an innermost surface inside the chamber (16; Figure 2,4; column 7, line 57 - column 8, line 14) and an outermost surface outside the chamber (16; Figure 2,4; column 7, line 57 - column 8, line 14); and a valve body (100/300, 102, 114, 110, 112, 118, 120; Figure 4; column 6, lines 13-40) having an entirety of a seat (inside valve volumes 110, 118; Figure 2) within the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14), the seat (inside

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<sup>1</sup> BPAI decision page 15.

<sup>2</sup> Proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. Because the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. (In re Wright, 193 USPQ 332 (CCPA 1977). MPEP 2125.

valve volumes 110, 118; Figure 2) forming a part of the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14), as claimed by claim 1<sup>3</sup>.

Posa further teaches:

- i. The apparatus of claim 1 wherein the chemical (56; Figure 1; column 5, lines 33-57) vapor deposition apparatus (Figure 4; column 7, line 57 - column 8, line 14) comprises an atomic layer deposition apparatus, as claimed by claim 2. Further, it has been held that claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim (Walter , 618 F.2d at 769, 205 USPQ at 409; MPEP 2106). Additionally, in apparatus claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto , 136 USPQ 458, 459 (CCPA 1963); MPEP2111.02).
- ii. The apparatus of claim 1 wherein the seat (inside valve volumes 110, 118; Figure 2) is within the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14) thickness, as claimed by claim 3
- iii. The apparatus of claim 1 wherein the valve body (100/300, 102, 114, 110, 112, 118, 120; Figure 4; column 6, lines 13-40) includes a portion of the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14) as at least a part of the seat (inside valve volumes 110, 118; Figure 2), as claimed by claim 4

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<sup>3</sup> Alternative language *not* taught by the prior art is deleted for clarity.

- iv. The apparatus of claim 1 wherein the valve body (100/300, 102, 114, 110, 112, 118, 120; Figure 4; column 6, lines 13-40) comprises at least a part of a valve housing between the innermost and outermost surfaces of the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14), as claimed by claim 5
- v. The apparatus of claim 5 wherein the valve body (100/300, 102, 114, 110, 112, 118, 120; Figure 4; column 6, lines 13-40) includes a portion of the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14) as at least a part of the valve housing, as claimed by claim 6
- vi. The apparatus of claim 1 further comprising at least a part of a process chemical inlet (124; Figure 2) to the valve body (100/300, 102, 114, 110, 112, 118, 120; Figure 4; column 6, lines 13-40) between the innermost and outermost surfaces of the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14), as claimed by claim 7
- vii. The apparatus of claim 7 wherein the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14) or body forms at least a part of the chemical inlet (124; Figure 2), as claimed by claim 8
- viii. The apparatus of claim 1 wherein the chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14) thickness<sup>2</sup> is much less than a chamber lid (100; Figure 2; 300, Figure 4; column 7, line 57 - column 8, line 14) width, as claimed by claim 37

The appellant must within **TWO MONTHS** from the date of the supplemental examiner's answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the rejection for which the Board has remanded the proceeding:

(1) **Reopen prosecution.** Request that prosecution be reopened before the examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit, or other evidence. Any amendment, affidavit, or other evidence must be relevant to the issues set forth in the remand or raised in the supplemental examiner's answer. Any request that prosecution be reopened will be treated as a request to withdraw the appeal. See 37 CFR 41.50(a)(2)(i).

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. If such a reply brief is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened under 37 CFR 41.50(a)(2)(i). See 37 CFR 41.50(a)(2)(ii).

Extensions of time under 37 CFR 1.136(a) are not applicable to the **TWO MONTH** time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Art Unit: 1792

**A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:**

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Rudy Zervigon/

Primary Examiner, Art Unit 1792

/Parviz Hassanzadeh/

Supervisory Patent Examiner, Art Unit 1792

**Application Number**

Application/Control No.

09/810,387

Examiner

Rudy Zervigon

Applicant(s)/Patent under  
Reexamination

CARPENTER ET AL.

Art Unit

1792